

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF GENERAL SERVICES
DIVISION OF PURCHASES AND SUPPLY
P.O. BOX 1199
RICHMOND, VIRGINIA 23218-1199

CONTRACT AWARD

1. DATE May 19, 2011
2. COMMODITY NAME Vehicle Lifts and Related Garage Equipment
3. VIRGINIA CONTRACT NUMBER 07544-11
4. WSCA/WASHINGTON STATE CONTRACT NUMBER 06405
4. SUPERSEDES NEW
5. CONTRACT PERIOD May 19, 2011 through March 31, 2013
6. AUTHORIZED USERS State Agencies and Other Public Bodies
7. CONTRACTORS (2)..... See Page 5 to 9
8. TERMS Net 30
9. DELIVERY See Below
10. F.O.B. FOB Destination, Freight Prepaid
11. MINIMUM ORDER N/A
12. FOR FURTHER CONTRACT INFORMATION CONTACT: Nancy Rowe, VCO
Statewide Contract Officer
Phone: (804) 786- 3854
Fax: (804) 786-0223
Email: nancy.rowe@dgs.virginia.gov
13. NOTICE TO ALL STATE AGENCIES: This contract is the result of a competitive bid program and its use is mandatory for all State Agencies in the purchase of any commodity listed herein. If the commodity or services available under this contract cannot be used by an agency, a request to purchase other goods or services of a similar nature shall be submitted to the appropriate DGS/DPS contract/purchase officer for approval. A complete and factual written justification is necessary to support the request. Refer to Section 13.7a of the Agency Procurement and Surplus Property Manual.

Nancy Rowe

By: _____
Nancy Rowe, Statewide Contract Officer

ORDERING INSTRUCTIONS

IMPORTANT! The applicable contract number and part number must be shown on each purchase order and copy, each facsimile transmission or given verbally when telephonic orders are placed.

1. Purchase orders: Unless otherwise instructed by the Division of Purchases and Supply, all departments, institutions and agencies of the Commonwealth of Virginia will order items/services through eVA. If this contract is authorized for use by localities, Virginia cities, counties, towns and political subdivisions, orders will be placed through eVA to the maximum extent possible. The orders will be governed by this agreement and the terms and conditions contained in the separate agreement for participation in eVA executed by the contractor.

The Virginia state contract number 07544-11 must appear on all written orders. In addition the WSCA/Washington state contract number 06405 must also appear on the order.

2. Complaints: Any complaint as to quality, faulty or delinquent delivery, or violation of contract provisions by contractor shall be reported to the Division of Purchases and Supply for handling with the contractor. Preprinted forms (DGS-41-024), by which to facilitate the notification of the contractor and this office of complaints, are available from the Division of Purchases and Supply.
3. Transportation and Packaging: Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
4. Inspection and Invoices: Inspection on delivery and approval of vendor's invoice is the responsibility of receiving state agency, Virginia city, county, town or political subdivision.

SCOPE OF CONTRACT: This Contract is for Vehicle Lifts and Related Garage Equipment for automobile, light and heavy duty trucks and transit. General product types included in this Contract are: Two-Post Lifts, Four Post Lifts, Mobile Column Lifts, Parallelogram Lifts, Scissor Lifts, In-Ground Lifts and related garage equipment.

Vehicle Lifts will be delivered to purchasers' installation location or installed at the option of the purchaser.

The Contract has the following benefits:

- Product Selection: Gives the purchaser an array of certified lifts from qualified manufacturers from which to select. This allows the purchaser the flexibility to select, for safety and production purposes, the most appropriate lift for their intended use.
- Best manufacturer price plus 2nd tier pricing option
- Only Certified product (Lifts) will be offered and sold under this contract.
- Guaranteed parts availability for 7 years after the installation date.
- Catalogs and list pricing available electronically.

STANDARDS: All vehicle lifts must meet the most current edition of ETL (Intertek Testing Services) and must be certified in accordance with the requirements of the Procedural Guide for

the Automotive Lift Institute (ALI) Certification Program, which includes compliance with national product safety standards and must be published on ALI website at:
<http://207.140.180.11/ali/ali2.nsf/frmHome?OpenForm>.

In addition the following items must be received with each vehicle lift purchased:

1. Lift Inspector/Operator Training Pack which will include:
 - Lift Operator/Training Pack
 - ALI “Lifting it Right” Safety Manual
 - ALI “Safety Tips Cards”
 - ALI/LP Guide
 - ANSI/ALI ALOIM Standard (current edition)
 - ANSI/ALI ALIS Standard (current edition)
 - ANSI/ALI ALCTV Standard (current edition)
2. ALI/WL Series Uniform Warning Labels/Placards

All above documentation is to be provided at no additional cost to the ordering agency. This documentation is necessary to develop a training plan to fulfill the current training requirements defined within OSHA General Duty Clause, WorkSafe BC and the Ontario Ministry of Labor.

SUMMARY OF SOLICITATION PROCESS: Contract Development History: At the request of the Western States Contracting Alliance (WSCA), a State of Washington Contract Development Team was formed to develop a contract for Vehicle Lifts and Related Garage Equipment. The question this team had to address was, “What process would we use to choose a product that has a life expectancy of 25 years, with equipment that has a primary impact on fleet productivity and safety concerns?” The team used a “Request for Proposal” format where the primary elements for contractor selection included the following items equally: safety history, reference recommendation, price competitiveness and financial history. The following are some highlights of the RFP process:

- All 17 members of the Automotive Lift Institute were contacted (www.autolift.org) and all were sent bid notification.
- There were a number of meetings and conversations with potential manufacturers and suppliers regarding this commodity.
- A pre-bid meeting was held. Five (5) different lift manufacturers were represented.
- Received Proposals from 7 of 17 members of the Automotive Lift Institute.
- Five (5) of the seven (7) proposals received went on to Step 2, Oral Interviews.
- Each offeror had to stipulate that the “MPL” prices being offered were the lowest offered to any government customer.
- All offers had to then pass the technical review committee which was made up of five (5) members of the Pacific Northwest Fleet Managers Association. This process was a Q & A between each potential lift vendor and the five (5) member panel.
- The review committee did not accept the offers of two (2) of the potential vendors.
- An award was made to (three) 3 vendors who collectively represent 4 (four) manufacturers of vehicle lifts, which the State feels can adequately serve the needs of the government agencies of Washington and other WSCA and non-WSCA states.

Vehicle Lift Other Information

1) Warranty: The Warranty shall be the manufacturer's standard warranty. The vendor shall be responsible for the cost of any inspections, adjustments, parts, labor, travel, pickup and/or delivery changes that are a result of equipment failures(s) during the warranty period. Provide a copy of your standard warranty. In the event the standard warranty literature includes terms not consistent with the states Standard Terms and Conditions, those inconsistencies will be disregarded unless specifically addressed in writing.
2) Lifts provided under this contract shall be new and unused and the most current advertised production model. Lifts shall be furnished with all standard equipment advertised. The lift shall be complete with all equipment required for operation.
3) Contractor shall provide adequate training in operation, safety and maintenance of supplied vehicle lifts before payment will be made.
4) Each lift shall be supplied with operation and service manuals to include an illustrated parts breakdown and service schedules. Lifts must be supplied with all ANSI, ALI/ETL safety data, safety booklets and lifting points' guides. Safety decals must be permanently placed on the lift in clear view of the operator.
5) Certification: Only certified lifts meeting ANSI/ALI ALCTV are to be provided under this contract. If a purchaser exercises their right to purchase a non-certified lift, that purchase shall be considered to be an off contract purchase.
6) Manufacture Certified Technicians: Installation and service shall be by manufacture certified technicians.
7) The manufacturer must be a firm regularly engaged in the design and manufacturing of lifts described herein for a period of not less than 5 years.

CONTRACTOR INFORMATION

Contractor: Mohawk Resources, Ltd
PO Box 110, Vrooman Ave
Mohawk Industrial Park
Amsterdam NY 12010-0110

Contractor eVA#: VS0000063225

Contractor Duns #: 101289916

Contract Administration:	Primary Contact	Alternate Contact
	Name: Steven Perlstein	Mary Minkler
	Phone: (518) 842-1431 Ext. 24	(518) 842-1431 Ext. 23
	Fax: (518) 842-1289	(518) 842-1289
	E-mail: sperlstein@mohawklifts.com	mminkler@mohawklifts.com
Customer Service/Order Placement:	Primary Contact	Alternate Contact
	Name: Ray Pedrick	Mike (Buck) Gasner
	Phone: (518) 842-1431 Ext. 15	(518) 842-1431 Ext. 25
	Fax: (518) 842-1289	(518) 842-1289
	E-mail: rpedrick@mohawklifts.com	bgasner@mohawklifts.com

Contract Pricing: Mohawk Product Line
Pricing is 15.59% Discount off current Manufacturer's Published List Price.

***Second Tier Pricing/Volume Pricing**

2 post models: A-7, System I and LMF-12 & TP-16: These discounts apply based on one order, one shipment to one location: 6Lifts at an additional 5% off; 3 TP-16 @ LMF-12 pricing; 12 lifts at an additional 10% off.

*Purchasers with requirements for multiple units may solicit additional improvements to Second Tier Pricing/Volume Pricing, than what is currently listed, from one or more of the contractors listed on this contract. Solicitation to improve current Second Tier Pricing/Volume Pricing is conducted by Purchaser and amendment to contract is not mandatory to implement.

Hunter Automotive Service Equipment

Contract net pricing can be found on Mohawk's website

Manufacturer's Website: **Mohawk and Hunter Contract pricing see:** <http://www.mohawklifts.com/gov/http://www.mohawklifts.com/>

Payment/Order Placement Address: Mohawk Resources, Ltd
PO Box 110, Vrooman Ave
Mohawk Industrial Park
Amsterdam NY 12010-0110

Credit Card Acceptance: Visa, MasterCard

Minimum Orders: None
Delivery Time: 15 days After Receipt of Order (ARO) for in-stock equipment.
3-8 weeks After Receipt of Order (ARO) for “built to order” equipment.
Payment Terms: Net 30 Days
Shipping Destination: Freight on Board (FOB) Destination
Freight: Freight is FOB Destination in the 48 contiguous states and the District of Columbia. Freight to Alaska or Hawaii will be FOB Seattle WA or Long Beach CA.
Palletization: Shall comply with all local, state and federal rules
Profile: Mohawk Resources, Ltd (a.k.a. Mohawk Lifts) has been designing, testing, fabricating & distributing lifts since its founding in 1981. Mohawk manufactures a full range of lifts.

Mohawk specializes in serving government agencies nationally through our in-house sales staff working jointly with our nationwide group of independent representatives. Mohawk is the 2nd largest lift supplier to the federal government. Similar to WSCA, the GSA requires Mohawk to have a network of installers, sales & service centers. Mohawks in-house sales, working with outside representatives is able to supply the federal government nationally & worldwide. In addition to selling lifts & equipment to state & local government agencies, Mohawk also acts as the government sales arm for Hunter Engineering (wheel alignment lifts, aligners, tire changers, balancers).

The Mohawk Lifts offered are 100% designed, engineered & made in the US. Mohawk Lifts are welded in Mohawks Amsterdam, NY factory. Mohawk Lifts do not contain any structural elements (i.e. components, pieces, parts, sub-assemblies, etc) that are of questionable origin.

Service Capability: Mohawk has a group of independent sales, service and installation representatives throughout the WSCA states. While some of these independent representatives act as sales, service and installation depots of Mohawk, others act as sales, while others are only service and installation facilities.

Mohawk has two in-house full time service managers at the Mohawk factory (both of whom are available after 5PM Eastern Time by calling Mohawks staffed 800# and having them paged for a return call). In addition, Mohawk maintains a website for all lift parts, service and installation instructions on every lift at our installation/parts/service manual website which is:
<http://www.mohawklifts.com/ops/>.

Contractor: Stertil-Koni USA, Inc.
200 Log Canoe Circle
Stevensville MD 21666-2111

Contractor eVA #: VS0000035563

Contractor Duns #: 160914909

Contract Administration:	Primary Contact	Alternate Contact
Name:	Jean DellAmore	Kellie Boehm
Phone:	(800) 336-6637 or (410) 643-9001	(800) 336-6637 or (410) 643-9001
Fax:	(410) 643-8901	(410) 643-8901
E-mail:	jdellamore@stertil-koni.com	kboehm@stertil-koni.com

Customer Service/Order Placement:	Primary Contact	Alternate Contact
Name:	Paul Marks	Bill Sinclair
Phone:	(800) 336-6637 or (410) 643-9001	(800) 336-6637 or (410) 643-9001
Fax:	(410) 643-8901	(410) 643-8901
E-mail:	pmarks@stertil-koni.com	bsinclair@stertil-koni.com

Contract Pricing: Pricing is 29% Discount off current Manufacturer's Published List Price.
Exception: ST-1060's, ST-1073's are 25% of MLP.

***Second Tier Pricing/Volume Pricing:**
32% off MLP for two to seven lifts ordered
33.5% off MLP for eight or more lifts ordered

*Purchasers with requirements for multiple units may solicit additional improvements to Second Tier Pricing/Volume Pricing, than what is currently listed, from one or more of the contractors listed on this contract. Solicitation to improve current Second Tier Pricing/Volume Pricing is conducted by Purchaser and amendment to contract is not mandatory to implement.

Contract pricing see: <http://wsca.stertil-koni.com/>

Manufacturer's Website: www.stertil-koni.com

Payment/Order Placement Address: Stertil-Koni USA, Inc.
200 Log Canoe Circle
Stevensville MD 21666-2111

Credit Card Acceptance: Visa, MasterCard

Minimum Orders: None

Delivery Time: With few exceptions, 10 business days After Receipt of Order (ARO) for Mobiles and 2-Posts.
120 business days After Receipt of Order (ARO) for 4-Posts, Parallelograms

and In-Grounds.

Payment Terms: 2% 20 days/Net 30
Shipping Destination: Freight on Board (FOB) Destination
Freight: Freight is FOB Destination to all WSCA states with the exception of Alaska and Hawaii. Freight to Alaska or Hawaii will be FOB Seattle WA or Long Beach CA.
Palletization: Shall comply with all local, state and federal rules
Profile: Stertil-Koni, USA, Inc. (hereafter referred to as SK) is a US subsidiary of a Dutch manufacturer, Stertil BV. SK was established by Jean DellAmore in January 1997 and was incorporated in the State of Maryland. The headquarters for the US operation is located near the Nation's capital, convenient to major cities throughout the northeast from Maine to Florida. Seventy-five percent (75%) of our sales consist of heavy-duty lifting products that are sold to municipalities, state and local government agencies. Our areas of product specialization are:

1. **Mobile Lifts** (from 40,000 to 160,000 lbs per set of four)
2. **Four-Post Drive on Lifts** (starting at 25,000 lbs up to 64,000 lbs)
3. **Parallelogram Lifts** (starting at 19,000 lbs going up to 99,000 lbs)
4. **In-Ground** (environmentally compliant lifts) (60,000 lbs for two ram going up to 100,000 lbs for two ram lifts + 3 ram lifts for articulated vehicles).
5. **Two-Post Lifts** (from 16,000 lbs to 18,000 lbs)

Highlights of Stertil-Koni worldwide

- Stertil-Koni is the first vehicle lift manufacturer (in the world) to have obtained ISO-9001 certification. The designation 9001 is the highest rating that a company can achieve.
- All Stertil-Koni products come with an unequivocal commitment to provide spare parts 25 years after termination of production. In other words, after a model is upgraded or discontinued for whatever reason, we commit to provide spare parts availability for 25 years.
- Close to 60% of our sales are Mobile Lifts; 20% Parallelogram Lifts; and 20% Four-Post and Two-Post Lifts.
- Stertil-Koni enjoys very low employee turnover. Most of our employees in the United States have been with us since the start up of the company.
 - The sales force has been in the heavy duty lifting industry for an average of 20 years per sales person.
 - Main technical support person has been with the company 9 years (almost from the beginning)
 - European engineering personnel have been with the company

an average of 15 years.

- Stertil-Koni has the highest number of certified products of any lift company in the world. We enjoy certifications from the following independent laboratories that certify lifting type products:
 - ALI/ETL (for North America)
 - CSA (for Canada)
 - CE (for Europe)
- TUV (for Europe) Stertil-Koni has a unique operating structure. In order to provide full and adequate coverage to customers in the United States, we utilize a hybrid approach to sales and service. Unlike many of our competitors, we have a two-tiered approach:
- Stertil-Koni has a unique operating structure. In order to provide full and adequate coverage to customers in the United States, we utilize a hybrid approach to sales and service. We have a two-tiered approach:
 - **REGIONAL VICE PRESIDENTS OF SALES** which focus on major customer development, sales and service support within a given geographical area. Currently there are 5 VP of Sales. These gentlemen in turn are responsible for managing individual distributors:
 - **EXCLUSIVE DISTRIBUTORS** within specific geographical zones who can provide input and assistance in the event of needed help.

VIRGINIA GENERAL TERMS AND CONDITIONS

- A. **VENDORS MANUAL:** This contract is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under “Vendors Manual” on the vendors tab.
- B. **APPLICABLE LAWS AND COURTS:** This contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state, and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** Contractor certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

- c. Notices, advertisements and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** The Contractor certifies that their bid and subsequent contract award was made without collusion or fraud and that they did not offer or receive any kickbacks or inducements from any other supplier, manufacturer or subcontractor in connection with their bid and subsequent contract, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** The Contractor certifies that they do not and will not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** Contractor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **PAYMENT:**
1. **To Prime Contractor:**
 - a. Invoices for items ordered, delivered, and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number, social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest

charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
 4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- I. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- J. **QUALIFICATIONS OF CONTRACTOR:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the contractor to perform the services/furnish the goods and the contractor shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect contractor's physical facilities prior to award to satisfy questions regarding the contractor's capabilities. The Commonwealth further reserves the right to reject any contractor if the evidence submitted by, or investigations of, such contractor fails to satisfy the Commonwealth that such contractor is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- K. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- L. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- M. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- N. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

- O. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- P. **TRANSPORTATION AND PACKAGING:** Contractor certifies and warrants that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped and in compliance with the terms of State of New York Contract/NASPO Cooperative Contract # 19745. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- Q. **INSURANCE:** Contractor certifies that it will have the following insurance coverage at the time the contract is awarded. The contractor further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
 2. Employer's Liability - \$100,000.
 3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
 4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)
- R. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv)

include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- S. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- T. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All contractors must register in eVA.
- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
 - b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
 - c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
 - d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:

- (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
- (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

The eVA transaction fee will be invoiced approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- U **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- V. **CURRENCY:** The contractor shall state prices in US dollars.

VIRGINIA SPECIAL TERMS AND CONDITIONS

1. **ADVERTISING:** No indication of sales or services to the Commonwealth of Virginia will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services, and the contractor shall not include the Commonwealth of Virginia in any client list in advertising and promotional materials. This clause does not apply to materials produced for use by the Commonwealth of Virginia
2. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
3. **ADDITIONAL USERS:** This contract is on behalf of the Commonwealth of Virginia, it's agencies, institutions, and other public bodies authorized by the *Code of Virginia* to purchase from state contracts. Addition or deletion of authorized users not specifically named above shall be made only by written contract modification issued by Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply and upon mutual agreement of the contractor. Such modification shall name the specific agency added or deleted and the effective date. The contractor shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification.
4. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any

contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

5. **CONFIDENTIALITY**: Unless approved in writing by the Department of General Services, Division of Purchases and Supply, the contractor may not sell or give to any individual or organization, reports, sales information, or other materials given to, prepared or assemble for contract users except for quarterly reports prepared in compliance with the Reports Clause of the WSCA contract.
6. **CONTRACTOR'S TITLE TO MATERIALS**: No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.
7. **DELIVERY AND MINIMUM ORDER**: Delivery times and minimum order amounts shall be as stated in WSCA Contract Cooperative Contract # 06405.
8. **FINAL INSPECTION**: At the conclusion of the work, the contractor shall demonstrate to the authorized owner's representative that the work is fully functional and in compliance with the contract specification and codes. Any discrepancy shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to acceptance of work.
9. **FOB**: Pricing for parts, after the installation, will be FOB Destination with the cost of shipping prepaid and added to the invoice as a separate item.
10. **INSPECTION OF JOB SITE**: Prior to commencing work the contractor shall inspect the job site becoming aware of the conditions under which work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Commonwealth.
11. **INSTALLATION**: The contract does not cover the installation of the equipment. Authorized users requiring installation shall contact the appropriate contractor for a list of the certified dealers. In the event the purchasing agency elects to install the lift themselves, the purchaser is responsible to unload the lift if shipped via a common carrier.
12. **LABELING OF HAZARDOUS SUBSTANCES**: If the items or products requested by under this contract are "Hazardous Substances" as defined by § 1261 of Title 15 of the United States Code (U.S.C.) or "Pesticides" as defined in § 136 of Title 7 of the United States Code, then the Contractor certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the bidder/offeror does not violate any of the prohibitions of Title 15 U.S.C. § 1263 or Title 7 U.S.C. § 136.

13. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.
14. **MAINTENANCE MANUALS:** The contractor shall provide with each piece of equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.
15. **PAYMENT OPTIONS:** Contract Users pay by check, electronic funds transfer, or with the Commonwealth's and Public Bodies' authorized procurement (charge) card. Contractor(s) should be able to accept the Commonwealth's and Public Bodies' card for single purchases under \$5,000 per transaction. Some Commonwealth Agencies and Public Bodies have charge cards that exceed the \$5,000 transaction limit so the contract shall have the ability to accept those with higher limits. Contractor must attach a list of the charge cards that are acceptable.
16. **PRICE ESCALATION/DE-ESCALATION:** Price adjustments shall be as permitted under WSCA Contract Cooperative Contract # 06405.
17. **PRICING METHOD AND ADJUSTMENTS:** The contract price shall be the Manufacture Price List (MPL) in effect at the time the order is placed less the discount percentage offered. Manufacturer price lists will be that price list published by the manufacturer and used by the general population of Contract users - not a unique price list.

Second Tier Pricing/Volume Pricing: Purchasers with requirements for multiple units may solicit additional improvements to Second Tier Pricing/Volume Pricing, than what is currently listed, from one or more of the contractors listed on this contract. Solicitation to improve current Second Tier Pricing/Volume Pricing is conducted by Purchaser and amendment to contract is not mandatory to implement.
18. **RENEWAL OF CONTRACT:** Renewals under this contract shall be based on renewal by WSCA Contract Cooperative Contract # 06405.
19. **REPORTS:** On a quarterly basis, the contractor shall submit to the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply statements or reports covering the total dollar volume of purchases made under this contract for all eligible entities within the Commonwealth. The quarterly report is due by the 20th of the month following the end of the quarter. In addition, the total number of each item ordered, the item cost, by ordering agency under this contract for all eligible entities within the Commonwealth.

19. **SUBCONTRACTS**: No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
20. **TRAINING**: When required the contractor, in conjunction with his subcontractors and suppliers, shall provide the owner's operational and maintenance personnel with instruction and training in the proper operation and maintenance of the equipment and related controls provided or altered in the work.
21. **WARRANTY**: The contractor agrees that the goods or services furnished under this contract shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods and services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth.